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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/802,745	03/18/2004	Tuan Q. Tran	07860004US	5337

7590 06/02/2006  
McGuire Woods LLP  
Suite 1800  
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EXAMINER

PATEL, NIHIR B

ART UNIT PAPER NUMBER

3743

DATE MAILED: 06/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	10/802,745		TRAN ET AL.	
	<b>Examiner</b>		<b>Art Unit</b>	
	Nihir Patel		3743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03.16.2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 12 and 15-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 12 and 15-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Response to Arguments*

1. Applicant's arguments filed on March 16<sup>th</sup>, 2006 with respect to claim 12 have been fully considered and are persuasive. The previous office action has been withdrawn.

### *Claim Objections*

2. Claims **15 through 18** are objected to because of the following informalities: Claims 15 through 18 are objected to because they depend on a canceled claim 13. Appropriate correction is required.

### *Claim Rejections - 35 USC § 102*

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claim **12** is rejected under 35 U.S.C. 102(b) as being anticipated by Harris et al. (US 3,861,386).
5. As to claim **12**, Harris teaches a nebulizer that comprises a hollow body (see **figure 2**) having a top and a bottom (see **figure 2**); an intake port **117** (see **figure 2**) and a delivery port **140** (see **figure 2**) proximate the top of the hollow body (see **figure 2**); a reversibly attachable connection port proximate the bottom of the hollow body (see **figure 2**); nebulizer inlet and a nebulizer outlet proximate the bottom of the hollow body (see **figure 2**); and a baffle.<sup>89</sup> (see **figure 2**) at least partially disposed within the hollow body, such that the baffle is a barrier and

wherein the hollow body and the baffle define an air flow path having portions parallel to one another through an interior of the hollow body (see figure 2).

6. As to claim 15 (the examiner takes the position that claim 15 depends on claim 12), Harris teaches an apparatus wherein the baffle includes a substantially planar member disposed between the intake flow path and the delivery flow path (see figure 2).

7. As to claim 16 (the examiner takes the position that claim 16 depends on claim 12), Harris teaches an apparatus wherein the connection port is configured to reversibly attach to a chamber (see figure 2).

8. As to claim 19, Harris teaches an apparatus wherein the delivery port is disposed on a conduit attached proximate a top of the hollow body (see figure 2).

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

11. Claims **17 and 18** are rejected under 35 U.S.C. 103(a) as being unpatentable over Harris et al. (US 3,861,386) in view of Lester (US 4,333,450).

12. **As to claims 17 and 18 (the examiner takes the position that claims 17 and 18 depends on claim 12),** Harris discloses the applicant's invention as claimed with the exception of providing a baffle that is configured to protrude into a chamber connected to the connection port. Lester discloses a nebulizer manifold that does provide a baffle that is configured to protrude into a chamber connected to the connection port. Therefore it would have been obvious to modify Harris's invention by providing a baffle that is configured to protrude into a chamber connected to the connection port as taught by Lester in order to collect the large water drops.

13. Claims **20 through 22** are rejected under 35 U.S.C. 103(a) as being unpatentable over Harris et al. (US 3,861,386) in view of Blacker (US 6,929,003).

14. **As to claims 20 through 22,** Harris discloses the applicant's invention as claimed with the exception of providing an exhaust outlet that includes a one-way valve. Blacker discloses an apparatus that does provide an exhaust outlet that includes a one-way valve. Therefore it would have been obvious to modify Harris's invention by providing an exhaust outlet that includes a one-way valve as taught by Blacker in order to prevent exhaust air from entering.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nihir Patel whose telephone number is (571) 272-4803. The examiner can normally be reached on 7:30 to 4:30 every other Fridays off.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett can be reached on (571) 272-4791. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Nihir Patel  
Art Unit 3743



Henry Bennett  
Supervisory Patent Examiner  
Group 3700